

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

In re: AIR CRASH AT TAIPEI TAIWAN
MULTIDISTRICT LITIGATION,

EVA VAN SCHIJNDEL, individually, as
successor in interest and heir of
JOHANNES VAN SCHIJNDEL,
deceased, and as Personal Representative
of the Estate of JOHANNES VAN
SCHIJNDEL; LAURA VAN
SCHIJNDEL, a minor, successor in
interest and heir of JOHANNES VAN
SCHIJNDEL, deceased, and by and
through her Guardian, EVA VAN
SCHIJNDEL; LUCAS VAN
SCHIJNDEL, a minor, successor in
interest and heir of JOHANNES VAN
SCHIJNDEL, deceased, and by and
through his Guardian, EVA VAN
SCHIJNDEL; SOPHIA VAN
SCHIJNDEL, a minor, successor in
interest and heir of JOHANNES VAN
SCHIJNDEL, deceased, and by and
through her Guardian, EVA VAN
SCHIJNDEL,

Plaintiffs - Appellants,

No. 04-55787

D.C. Nos. MDL-01-01394-GAF
CV-02-02530-GAF

MEMORANDUM^{*}

^{*} This disposition is not appropriate for publication and may not be cited to
or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

v.

BOEING COMPANY; GOODRICH
CORPORATION, a corporation, fka B.F.
Goodrich Company,

Defendants - Appellees.

Appeal from the United States District Court
for the Central District of California
Gary A. Feess, District Judge, Presiding

Argued and Submitted July 11, 2005
Pasadena, California

Before: REINHARDT, KOZINSKI, and BERZON, Circuit Judges.

Eva Van Schijndel¹ appeals the district court's dismissal of her claims against The Boeing Company and Goodrich Corporation (collectively, "Boeing") on *forum non conveniens* grounds. For several reasons, we conclude that the district court's assessment of the relevant factors was not reasonable and, therefore, that the dismissal constituted an abuse of discretion. *Ravelo Monegro v. Rosa*, 211 F.3d 509, 511 (9th Cir. 2000).

¹ Eva Van Schijndel brings her suit individually, as the successor in interest and heir to the estate of Johannes Van Schijndel, and also as the personal representative of the estate. In addition, three minors, all successors in interest and heirs to the estate, are named plaintiffs. We refer to the plaintiffs collectively as "Van Schijndel."

First, the decision misstates the plaintiffs' theory as being "that a fully loaded, fully fueled 747 aircraft, moving down a closed, under-construction runway at take-off speed, should be able to withstand collision with construction cranes, bulldozers, and the like." This characterization differs from the district court's earlier and correct understanding of the action as premised on the malfunctioning of the allegedly flawed design and manufacture of the plane's emergency and evacuation equipment, not the "integrity of the aircraft" itself on impact. The difference between these theories is material with respect to several key inquiries pertinent to the *forum non conveniens* question, including which evidence and witnesses are material and whether the products liability case would be more conveniently heard in the same location as the case against Singapore Airlines.

Second, unlike the initial order denying Boeing's original motion to dismiss, which names and rejects Singapore as the single alternative forum, the order upon reconsideration names three alternative forums: Singapore, Canada, and Taiwan. As a result, the court failed to balance the competing interests fairly by comparing the domestic forum to a particular foreign forum, and it is unclear *which* alternative forum the court ultimately found to be both adequate and more convenient than the domestic forum chosen by plaintiffs. *Compare Piper Aircraft Co. v. Reyno*, 454

U.S. 235, 238-41, 257-61 (1981) (comparing domestic forum with a single forum, Great Britain); *Lueck*, 236 F.3d at 1143-48 (comparing domestic forum with a single foreign forum, New Zealand); and *Cheng v. Boeing Co.*, 708 F.2d 1406, 1410-12 (9th Cir. 1983) (comparing domestic forum with a single foreign forum, Taiwan) *with*, ER 88-92 (grouping together multiple foreign fora and comparing with domestic forum). This defect is of great significance on the facts of the case, as the crash took place in Taiwan, the airline is headquartered in Singapore, and the relevant witnesses appear to reside in Singapore, Taiwan, the United States, and elsewhere. Additionally, at the time of this appeal, the only remaining plaintiffs are from the Netherlands. Consequently, unlike in *Piper Aircraft*, *Lueck*, and *Cheng*, it is far from evident that there is any *single* alternative forum more convenient than the United States.

Third, the district court's statement in its dismissal order that a joint trial of Boeing and Singapore Airlines could risk prejudice to *each* defendant does not comport with the finding, in the same order, that the existence of various foreign fora, in each of which all claims might be resolved *in a single action*, supported dismissal. *Compare* ER 86 and ER 91. Although the district court may have had reasons for reaching this seemingly contradictory conclusion, those reasons do not appear in the record.

These three errors in the district court's overall approach to its *forum non conveniens* analysis so affected the court's balance of the private and public interest factors as to render that balance unreasonable.

Therefore, we REVERSE the district court and REMAND for further proceedings consistent with this disposition.

REVERSED AND REMANDED.